



**ON READING** the First Report of the Liquidator dated November 13, 2017 (the “**First Report**”), the Affidavit of Ali Akman sworn on November 16, 2017, the Supplemental Report of the Liquidator dated November 16, 2017 (the “**First Supplemental Report**”) and the Second Supplemental Report and on hearing the submissions of counsel for the Liquidator, the Applicants, certain of the Respondents, Meridian Credit Union Limited, Kingsett Mortgage Corporation, Global Hospitality Licensing S.a.r.l. and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Alina Stoica sworn November 14, 2017, filed:

#### **DEFINITIONS**

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings set out in the Sale Process.

#### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

#### **MARKETING AND LISTING AGREEMENT**

3. **THIS COURT ORDERS** that the Liquidator is authorized to execute and to carry out and perform its obligations under the Marketing and Listing Agreement (including the payment of the amounts due to be paid to Colliers by the Liquidator pursuant to the terms thereof), and such Marketing and Listing Agreement, substantially in the form annexed to the Second Supplemental Report be and is hereby approved.

#### **SALE PROCESS**

4. **THIS COURT ORDERS** that the Sale Process substantially in the form attached as **Schedule “A”** be and is hereby approved.

5. **THIS COURT ORDERS** that the Liquidator is authorized and directed to carry out the Sale Process utilizing the services of Colliers for the purpose of soliciting interest in and opportunities for a sale of the assets, property and undertaking of Tarn (the “**Assets**”) and to take such steps and execute such documentation as may be necessary or incidental to the Sale Process.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Liquidator either directly or through Colliers, may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the Assets (the “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Liquidator, or in the alternative destroy all such information. The purchaser of the Assets shall be entitled to continue to use the personal information provided to it, and in a manner which is in all material respects identical to the prior use of such information by the Liquidator and/or Tarn, and shall return all other personal information.

7. **THIS COURT ORDERS** that the Liquidator and its respective affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Liquidator in performing its obligations under the Sale Process as determined by this Court.

#### **AUTHORIZATION TO COMMENCE APPLICATION FOR SEVERANCE**

8. **THIS COURT ORDERS** that the Liquidator is hereby empowered and authorized, but not obligated, to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands, including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the

lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets and the Development Assets may be sold in two parcels as well as together under the Sale Process.

**SEALING ORDER**

9. **THIS COURT ORDERS** that, subject to further Order of the Court, Confidential Appendix "1" of the Second Supplemental Report shall be sealed and kept confidential and shall not form part of the public record but rather shall be placed, separate and apart from all other contents of the file, in a sealed envelope that identifies the title of these proceedings and notes that the contents thereof are subject to a sealing order that may only be opened upon further Order of the Court.

**GENERAL**

10. **THIS COURT ORDERS** that the Liquidator may from time to time apply to this Court for advice and directions on the discharge of its duties and powers hereunder.



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## Schedule "A" - Sale Process

On September 15, 2017, the Ontario Superior Court of Justice (the "**Court**") issued an order (the "**Winding Up Order**"), ordering the winding up of Tarn Financial Corporation ("**Tarn**") and appointing KPMG Inc. as the Liquidator (the "**Liquidator**") of the estate and effects of Tarn pursuant to the Ontario *Business Corporations Act*, which appointment is effective as of September 25, 2017. Pursuant to the Winding Up Order, the Liquidator is authorized to market the assets, property and undertaking of Tarn (the "**Assets**") for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as the Liquidator in its discretion may deem appropriate. The Assets include the 366-room Delta Toronto East Hotel (the "**Hotel Assets**") and adjoining development lands known as "The Kennedy's Condominium Project", which contemplates the construction of two condominium towers containing a total of 644 units of which substantially all of the units have been pre-sold (the "**Development Assets**") each located at 2035 Kennedy Road, Toronto, Ontario (the "**Real Property**").

On November 29, 2017, the Court made an order (the "**Sale Process Order**") among other things, (a) approving the marketing and listing agreement between the Liquidator and Colliers Macaulay Nicolls Inc.; (b) approving the Sale Process for the solicitation of offers or proposals (each a "**Bid**") for the acquisition of the Assets; (c) authorizing the Liquidator to apply for consent to sever for the Real Property (the "**Land Severance**"); and (d) granting a sealing order in respect of the Confidential Appendix "1" to the Liquidator's second supplemental report dated November 28, 2017.

Accordingly, the following Sale Process shall govern the proposed sale of all or substantially all of the Assets pursuant to one or more Bids. This Sale Process shall govern the process relating to the solicitation by the Liquidator, utilizing Colliers as set out herein, of one or more Bids for the Assets that, alone or in combination, are determined by the Liquidator, taking into account the market expertise of Colliers, to be the highest or otherwise best offer for the Assets to be brought forward by the Liquidator for Court approval. The Sale Process is intended to solicit interest in an acquisition of the Assets, under a fair and competitive sale process pursuant to which all qualified interested parties will be provided with a fair and equal opportunity to participate in the Sale Process.

Notwithstanding anything contained herein, the Liquidator shall have the right to enter into an exclusive transaction for the sale of the Assets, or any portion thereof, outside of the Sale Process prior to the selection of a Successful Bidder (as defined herein).

### 1. **Definitions**

Capitalized terms used in this Sale Process shall have the definitions given to them in the preamble hereto and as follows:

"**Acknowledgement of Sale Process**" means an acknowledgement of the Sale Process in the form attached as **Schedule 1** hereto;

**“Acquisition Entity”** means an entity specially formed for the purpose of effectuating the contemplated transaction;

**“Approval and Vesting Order”** has the meaning given to it in Section 13 hereof;

**“Back-up Bid”** means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Liquidator and Colliers, taking into account financial and contractual terms, the claims likely to be created by such Bid in relation to other Bids and other factors relevant to the Sale Process, including those factors affecting the speed and certainty of consummating the proposed sale, provided that one or more Portion Bids may form part of the Back-up Bid so long as such Portion Bids, if more than one, do not overlap in respect of the Assets sought to be purchased and the Liquidator has determined that it will be able to obtain the Land Severance;

**“Back-up Bidder”** means the Bidder submitting the Back-up Bid;

**“Bidder”** means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

**“Binding APA”** means executed asset purchase agreement reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Non-Binding APA that it submitted and reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Template APA;

**“Colliers”** means Colliers Macaulay Nicolls Inc., in its capacity as listing and marketing agent engaged by the Liquidator pursuant to a Marketing and Listing Agreement approved by the Court by Order dated November 29, 2017;

**“Confidential Information Memorandum”** means a confidential information memorandum prepared by Colliers providing certain confidential information in respect of or related to the Assets;

**“Confidentiality Agreement”** means an executed confidentiality agreement in form and substance acceptable to the Liquidator and its counsel;

**“Development Assets”** means development lands known as “The Kennedys Condominium Project” (Phase 1), which contemplates the construction of two condominium towers containing a total of 644 units of which substantially all of the units have been pre-sold;

**“Encumbrances”** means, collectively, all charges, pledges, liens, security interests, encumbrances, claims, options, and interests thereon and there against the Assets, other than any permitted encumbrances under the Successful Bidder’s Successful Bid;

**“Good Faith Deposit”** means a cash deposit equal to ten (10) percent of the total purchase price contemplated under the applicable Binding APA;

“**Hotel Assets**” means all of the Assets related to the hotel operations currently branded as the Delta Toronto East Hotel<sup>1</sup>;

“**Interested Party**” means a party participating in this Sale Process and for greater certainty may include any shareholder of Tarn;

“**Land Severance**” has the meaning given to it in Section 2 hereof;

“**Non-Binding APA**” means an asset purchase agreement submitted by the applicable Qualified Phase I Bidder including a mark-up to the Template APA reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Template APA;

“**Notice Parties**” means Colliers to the attention of Alam Pirani (alam.pirani@colliers.com), Robin McLuskie (robin.mcluskie@colliers.com), Stephen Ho (stephen.ho@colliers.com) and Russell Beaudry (russell.beaudry@colliers.com), the Liquidator to the attention of Anamika Gadia (agadia@kpmg.ca) and counsel to the Liquidator, Miller Thomson LLP, to the attention of Kyla Mahar (kmahar@millerthomson.com);

“**Phase I Bid**” means an initial Bid submitted by an Interested Party pursuant to Section 7 hereof;

“**Phase I Bid Deadline**” means noon (Eastern time) on January 31, 2018;

“**Phase I Bidder**” means a bidder submitting a Phase I Bid;

“**Phase I Participant Requirements**” has the meaning given to it in Section 7 hereof;

“**Phase II Bid**” means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 9 hereof;

“**Phase II Bid Deadline**” means noon (Eastern time) on February 23, 2018;

“**Phase II Participant Requirements**” means, collectively, the requirements set out in Section 7(a) through 7(e) hereof;

“**Portion Bid**” means a Bid in respect of either the Hotel Assets or the Development Assets;

“**Portion Bidder**” means a bidder submitting a Portion Bid;

“**Principals**” means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

“**Qualified Phase I Bidder**” means (i) a Phase I Bidder for all of the Assets that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and Colliers, in consultation with the Secured Lenders, determine is reasonably

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<sup>1</sup> Continuing the hotel as a Delta branded hotel will require the consent of Global Hospitality Licensing Company, S.a.r.l.

likely to submit a binding *bona fide* offer at fair market value for the Assets that it would be able to consummate if selected as a Successful Bidder or (ii) a Phase I Bidder that is a Portion Bidder and that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and Colliers, in consultation with the Secured Lenders, determine is reasonably likely to submit a binding *bona fide* offer at fair market value for the Assets it is seeking to purchase that would be able to consummate a transaction if selected as a Successful Bidder.

“**Qualified Phase II Bid**” means a Phase II Bid that satisfies the conditions set out in Section 9 hereof. A Portion Bid may be a Qualified Phase II Bid if the Liquidator has determined that it will be able to obtain a Land Severance;

“**Qualified Phase II Bidder**” means a Bidder submitting a Qualified Phase II Bid;

“**Sale Hearing**” means a hearing to approve the sale of Assets to the Successful Bidder;

“**Secured Lenders**” means Meridian Credit Union Limited and Kingsett Mortgage Corporation;

“**Successful Bid**” means the highest and/or best Qualified Phase II Bid as determined by the Liquidator and Colliers, taking into account financial and contractual terms and the factors relevant to the Sale Process, including those factors affecting the cost, speed and certainty of consummating the proposed sale, the claims likely to be created by such Bid in relation to other Bids and, provided that one or more Portion Bids may be able to form part of the Successful Bid as long as such Portion Bids do not overlap in respect of the Assets sought to be purchased and the Liquidator has determined that it will be able to obtain the Land Severance;

“**Successful Bidder**” means the Bidder submitting the Successful Bid;

“**Template APA**” means a template asset purchase agreement prepared by the Liquidator and available to Interested Parties from Colliers;

“**Units**” means the condominium units pre-sold by Tarn and/or Tarn Construction for The Kennedy’s Condominium Project and “**Unit**” means any one of them.

## 2. **Assets for Sale**

At the request of the Liquidator, Colliers is soliciting offers for all or a portion of the Assets.

As at the time of commencing the Sale Process, the Real Property containing the Hotel Assets and the Development Assets has not been legally severed. While the Sale Process is being undertaken, the Liquidator has been given the authority to apply for to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands ( a “**Land Severance**”), including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets

and the Development Assets may be sold in two parcels as well as together under the Sale Process. Whether obtaining a Land Severance results in value maximization and whether the Liquidator will be able to obtain a Land Severance is uncertain at this time.

For the purposes of the Sale Process, it is recommended that Bidders submit a Phase I Bid for all of the Assets. To the extent that Bidders submitting a Phase I Bid would be interested in also submitting a Portion Bid for the Hotel Assets or the Development Assets, such Phase I Bidder will be required to ascribe a value to these Assets separately and then collectively if their Phase I Bid includes both. Colliers and the Liquidator will consider Phase I Bids that are Portion Bids submitted for either the Hotel Assets or the Development Assets based on, among other factors, the interest from Bidders and the expected ability to obtain a Legal Severance and the timing of obtaining same, the Liquidator and Colliers will determine whether to pursue the Land Severance to allow the Hotel Assets and the Development Assets to be sold separately or whether to seek to introduce Bidders submitting Portion Bids to each other for the purposes of submitting a Qualified Phase II Bid for the Assets collectively.

The Liquidator reserves the right to eliminate certain assets available for sale pursuant to the Sale Process prior to the Phase I Bid Deadline.

### **3. Sale Process Structure and Bidding Deadlines**

The Liquidator has engaged Colliers as listing and marketing agent to undertake the marketing and sale aspects of the Sale Process, subject to the oversight of the Liquidator as the statutory representative of Tarn and officer of the Court. Interested Parties wishing to obtain information about the Sale Process, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the following representatives of Colliers: Alam Pirani (alam.pirani@colliers.com), Robin McLuskie (robin.mcluskie@colliers.com), Stephen Ho (stephen.ho@colliers.com) and Russell Beaudry (Russell.beaudry@colliers.com).

The Sale Process shall consist of two phases. In the first phase, Interested Parties that meet the Phase I Participant Requirements set out herein, shall be provided the Confidential Information Memorandum and provided with an opportunity to undertake a site visit with Colliers in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline. In addition, Phase I Bidders that meet the Phase I Participant Requirements set out herein be given access to an electronic data room in order to undertake their diligence, which will include the Template APA.

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline. All Phase II Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received no later than the Phase II Bid Deadline. In addition, written copies of the Bids shall be delivered by the applicable deadline to the Liquidator and its counsel at the following addresses: (a) the Liquidator, KPMG Inc., Bay Adelaide Centre, 4600 – 333 Bay Street, Toronto, Ontario M5H 2S5 Attn.: Anamika Gadia, agadia@kpmg.ca; and (b) counsel to the Liquidator, Miller Thomson LLP, Scotia Plaza, 5800- 40 King Street West, Toronto, Ontario M5H 3S1, Attn: Kyla Mahar, kmahar@millერთhompson.com. A Bid received after the Phase I Bid Deadline shall

not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline may be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

**4. Timeline**

The following table sets out the key milestones under the Sale Process:

<b>Milestone</b>	<b>Date</b>
Phase I Bid Deadline	January 31, 2018
Phase II Bid Deadline	February 23, 2018
Anticipated Timing for Sale Hearing	March 23, 2018

Subject to the terms contained herein and any order of the Court, the dates set out in the Sale Process may be extended by the Liquidator and Colliers, in their sole discretion acting reasonably, all with a view of maximizing the value of the Assets. If the Phase I Bid Deadline or the Phase II Bid Deadline is extended, Colliers will promptly notify all of the Interested Parties that have met the Phase I Participant Requirements or all of the Qualified Phase I Bidders, as applicable.

**5. Access to Due Diligence Materials**

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum. If the Liquidator and Colliers determine that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive additional due-diligence access or additional non-public information. Qualified Phase I Bidders will be given access to an expanded electronic data room maintained by Colliers following the Phase I Bid Deadline.

Colliers, in its reasonable business judgment, in consultation with the Liquidator as it deems necessary, and subject to competitive and other business considerations, may give each Qualified Phase I Bidder, such access to due diligence materials and information relating to the Assets as it deems appropriate. Colliers will be responsible for the coordination of all reasonable requests for additional information and due-diligence access from Qualified Phase I Bidders. Colliers may designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Phase I Bidders and the manner in which such requests must be communicated.

Neither the Liquidator or Colliers or any of each of their affiliates (or any of its respective representatives) will be obligated to furnish any information relating to the Assets to any person, in its discretion. The Liquidator and Colliers each make no representation or warranty as to the information to be provided through this due diligence process or otherwise, except as may be set forth in a Binding APA with the Successful Bidder(s). Neither the Liquidator nor Colliers shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Liquidator nor Colliers is responsible for, and will bear no

liability with respect to, any information obtained by any party in connection with the sale of the Assets.

## 6. **Information From Interested Parties**

Each Interested Party shall comply with all reasonable requests for additional information by Colliers and/or the Liquidator regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Liquidator and Colliers to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

## 7. **Participant Requirements**

### **Phase I Participant Requirements.**

To participate in Phase I of the Sale Process and to otherwise be considered for any purpose hereunder, each Interested Party must provide Colliers with each of the following prior to being provided with the Confidential Information Memorandum: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Process (collectively, the “**Phase I Participant Requirements**”).

### **Phase II Participant Requirements.**

Only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Process. In order for the Liquidator and Colliers to determine whether an Interested Party is a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Liquidator and Colliers, in consultation with the Secured Lenders, the following on or before the Phase I Bid Deadline:

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding APA. A Non-Binding APA satisfactory to the Liquidator and Colliers that must reasonably identify the contemplated transaction, including whether the Hotel Assets or the Development Assets or all Assets (or such portions thereof) are proposed to be acquired, the proposed purchase price including allocation, if any, and any contingencies, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the Phase I Bidder’s chief executive officer or other appropriate senior executive’s approval of the Phase I Bid; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must furnish written evidence reasonably acceptable to the Liquidator and Colliers of the approval of the Phase I Bid by the Acquisition Entity’s Principals; and

- (d) Proof of Financial Ability to Perform. Written evidence upon which the Liquidator and Colliers may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
- (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);
  - (ii) contact names and numbers for verification of financing sources;
  - (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
  - (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Liquidator and Colliers demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Liquidator and Colliers shall determine, in their reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

The Liquidator and Colliers may determine whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be a Qualified Phase I Bidder.

If the Liquidator and Colliers are not satisfied with the number or terms of the Non-Binding APAs, the Liquidator and Colliers may extend the Phase I Bid Deadline or amend the Sale Process. Colliers will promptly notify all of the Interested Parties that have met the Phase I Participant Requirements of such extension or amendment.

#### 8. **Designation as Qualified Bidder**

Following the Phase I Bid Deadline, the Liquidator and Colliers, in consultation with the Secured Lenders, shall determine which Phase I Bidders are Qualified Phase I Bidders. Colliers shall notify each Phase I Bidder of the determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline.

Following the Phase II Bid Deadline, the Liquidator and Colliers, in consultation with the Secured Lenders, shall determine which Qualified Phase I Bidders are Qualified Phase II Bidders. Colliers shall notify each Qualified Phase I Bidder of its determination as to whether they are a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

## 9. Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. Colliers will take all reasonable steps to negotiate and assist the Qualified Phase I Bidders in completing any unperformed due diligence, or any other Bid matters including any discussions or negotiations required to be completed with any stakeholders in the winding up proceedings of Tarn, with a view of submitting a Binding APA on or before the Phase II Bid Deadline. In order to be considered a Qualified Phase II Bid, as determined by the Liquidator and Colliers, in consultation with the Secured Lenders, a Phase II Bid shall satisfy the following conditions:

- (a) Written Submission of Binding APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Binding APA (together with a blackline of the Binding APA against the Template APA outlining all changes from the Template APA and also a blackline from the Non-Binding APA submitted by the Qualified Phase I Bidder), and a written and binding commitment to close on the terms and conditions set forth therein.
- (b) Irrevocable. Include a letter stating that the Phase 2 Bid is irrevocable and open for acceptance until the Successful Bid and the Back-up Bid have been selected by the Liquidator and Colliers;
- (c) Contingencies. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated will be considered by the Liquidator and Colliers based on the other Phase II Bids received;
- (d) Financing Sources. A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Liquidator and Colliers and appropriate contact information for such financing sources must be provided;
- (e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break-up fee, expense reimbursement or similar type of payment;
- (f) Disclosure: Fully disclose the identity of each entity that will be entering into the transaction and that is participating or benefiting by such Bid; and
- (g) Good-Faith Deposit. Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Liquidator by wire transfer or banker's draft, to be held by the Liquidator in trust in accordance with this Sale Process and which may be adjusted based on the process set out in Section 10.

The Liquidator and Colliers shall be entitled to seek additional information and clarifications from Qualified Phase I Bidders in respect of their Phase II Bids at any time. The Liquidator and Colliers may determine whether to entertain Bids for the Assets that do not

conform to one or more the requirements specified herein and deem such Bids to be Qualified Phase II Bids.

#### **10. Determination of Successful Bid**

A Qualified Phase II Bid will be valued based upon several factors including, without limitation, items such as the purchase price and the net value provided by such Bid, the claims likely to be created by such Bid in relation to other Bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, the Assets included or excluded from the Bid, the transition services required from the Liquidator (if any), any related transaction costs, and the likelihood and timing of consummating such transactions, each as determined by the Liquidator and Colliers, in consultation with the Secured Lenders. For greater certainty, any Qualified Phase II Bid received from a shareholder of Tarn will be evaluated on the same criteria as any Qualified Phase II Bid received from a third party.

If more than one Qualified Phase II Bids are received by the Phase II Bid Deadline, the Liquidator and Colliers shall have the option to:

- (a) Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Liquidator, to determine the Successful Bid and the Back-up Bid;
- (b) Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-up Bid; or
- (c) Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid.

#### **11. Acceptance of Successful Bid**

The Liquidator shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Liquidator will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Liquidator will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

#### **12. “As Is, Where Is”**

The sale of any of the Assets pursuant to this Sale Process shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Liquidator, Colliers or their respective directors, officers, employees or agents except to the extent set forth in the Successful Bid. By submitting a Bid, each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or

otherwise, regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA approved by the Court.

**13. Free Of Any And All Encumbrances**

Except as otherwise provided in the Successful Bid, all of the rights, title and interests of Tarn in and to the Assets, or any portion thereof, shall be sold free and clear of all Encumbrances, pursuant to an order by the Court approving the sale of the Assets, or a portion thereof, and vesting in the Successful Bidder all of Tarn's rights, title and interests in and to such Assets, or a portion thereof, by way of an approval and vesting order (the "**Approval and Vesting Order**"). For greater certainty, such Encumbrances shall attach to the net proceeds of the sale of such Assets following the granting of the Approval and Vesting Order and closing of the transaction.

**14. Sale Hearing**

A Sale Hearing shall be conducted by the Court as soon as practicable after the determination by the Liquidator of the Successful Bidder. If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Liquidator shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Liquidator shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Liquidator on a conditional basis at the Sale Hearing, at the Liquidator's discretion.

**15. Return of Good Faith Deposit**

Good Faith Deposits of all Qualified Phase II Bidders shall be held in an account of the Liquidator. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-Up Bidder, shall be returned to such Qualified Phase II Bidders within ten (10) business days of the selection of the Successful Bidder and Back-Up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder within three (3) business days of the closing of the transactions contemplated by the Successful Bid. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Liquidator shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be applied to the purchase price of the transactions contemplated by the purchase agreement of the Back-Up Bidder at closing.

**16. Reservation of Rights**

The Liquidator may, after consultation with Colliers and the stakeholders it determines to be appropriate to consult in the circumstances, reject at any time before entry of an order of the Court approving a Successful Bid, any Bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of this Sale Process, or (c) contrary to the best interests of the Winding Up.

**17. Miscellaneous**

This Sale Process is solely for the benefit of the Liquidator and nothing contained in the Sale Process Order or this Sale Process shall create any rights in any other person or Bidder (including without limitation rights as third party beneficiaries or otherwise).

Except as provided in the Sale Process Order and Sale Process, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order and the Sale Process.

**Schedule "1"**  
**Acknowledgement of Sale Process**

The undersigned hereby acknowledges receipt of the Sale Process approved by the Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) dated November 29, 2017 and that compliance with the terms and provisions of the Sale Process is required in order to participate in the Sale Process and for any Phase I Bid or Phase II Bid to be considered by the Liquidator.

This \_\_\_\_\_ day of \_\_\_\_\_.

[NAME]

By:

\_\_\_\_\_  
[Signing Officer]

Volkan Basegmez et al  
Applicants

Ali Akman et al.  
and Respondents

Court File No.: CV-17-11697.00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**SALE PROCESS ORDER  
(DATED: NOVEMBER 29, 2017)**

**MILLER THOMSON LLP**

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Liquidator of Tarn Financial Corporation